IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 449.

THE UNITED STATES, APPELLANT,

vs.

WONG KIM ARK, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Note in Answer to "Reply Brief for the United States."

The notion suggested apparently in the "Reply Brief for the United States," that at common law the children born out of the British dominions of a natural-born British subject, not an ambassador of the Crown, were natural-born British subjects, and not aliens, is disposed of by the great authorities on English law referred to in the Briefs for the Appellee; and to these may be added the decision in the case of *De Geer vs. Stone*, 1882, 22 Ch. Div., 247, which is cited by Mr. Westlake in the third edition of his work on Private International Law, pp. 324–326, as determin-

ing that the common-law principle by which the children of *ambassadors* in the service of the Crown are treated as natural-born British subjects, does not apply even to the *children born of officers in the military or naval service of the Crown in foreign countries*, and that no children, neither whose fathers nor whose paternal grandfathers were born within British dominions, have been made British subjects by any Act of Parliament.

The interesting and luminous judgment of Mr. Justice Kay, in that case, accords with the opinion of Lord Chief Justice Cockburn, in his Treatise on Nationality (pp. 7–10), already cited (to which the judgment refers), and with the opinion of the British Naturalization Commission of 1868, that by the common law *no effect was given to descent as a source of nationality*, and that the Act of the 25th Edward III, and subsequent British statutes, relieving from alienage the foreign-born children of British subjects, were not *declaratory* of the common law, but were *substantive enactments*.

The *only* exception, therefore, if it can be called an exception, to the rule of the alienage at common law of the children of natural-born British subjects born abroad, is in favor of the children of ambassadors; but they constitute no real exception, as Mr. Westlake observes, because an ambassador's house is reputed part of his *sovereign's realm*. (Priv. Int. Law, 1st ed., p. 9.)

Mr. Westlake, in the last edition of his work, says, at page 324, that the statement by Dyer, in a note on page 224 of his reports, that it was adjudged, in Tr. 7 E. 3, that children of subjects born beyond sea, in the service of the King, shall be inheritable, is a pure mistake. Mr. Westlake searched the roll with the expert assistance of Mr. Selby, and they found that Dyer had entirely misread or misunderstood the words on which his statement was based, and which, correctly *translated*, mean only that a certain person was then *living* beyond sea, not that he had been *born* beyond sea.

The *quære* of the learned Solicitor General (Brief, p. 20) in regard to the legislation of Congress in the Acts of April 14, 1802, and February 10, 1855, and the principles upon which it is based, is responded to with the accurate and profound knowledge of the common law possessed by Horace Binney, in the article published by him, in 1854, in the American Law Register, which is referred to in the Brief of Mr. Evarts, and also in the Brief of the undersigned. ("The Alienigenæ of the United States," 2 American Law Register, p. 194.)

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